IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MS.JUSTICE J. UMA DEVI

WRIT PETITION No.42806 OF 2017

Date:01.05.2018

Between:

M/s.Osho Organics, Injapur Village,
Hayathnagar Mandal, R.R.District,
Rep. by its Proprietor

...Petitioner

Vs.

Union of India,
Rep. by its Secretary, Ministry of Finance,
Central Secretariat, New Delhi and others

.. Respondents

For Petitioner : M/s. Pavan Kumar Annabathuni

For Respondents : Mr.K.Lakshman
Mr.Y.N.Vivekananda

Gist :

Head Note :

Cases Referred :

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE MS.JUSTICE J. UMA DEVI

WRIT PETITION No.42806 OF 2017

ORDER: *(per V. Ramasubramanian, J)*

The petitioner, who approached the settlement Commission for settlement of a case arising out of a show cause notice issued on 16.02.2017, along with three other individuals, has come up with the above writ petition seeking a limited relief to direct the 3rd respondent to release the imported goods to the company of which the three co-applicants were the Directors.

2. Heard Mr.S.Ravi, learned Senior Counsel for the petitioner and Mr. Y.N.Vivekananda, learned Standing Counsel for the respondents.

3. The petitioner which is a proprietary concern, along with three persons who were Directors of a private limited company by name "Prism Crop Science Pvt. Limited", made an application jointly on 12.04.2017 before the Settlement Commission, under Section 127 C of the Customs Act, seeking to settle a dispute arising out of five show cause notices. The Settlement Commission, after hearing the Department passed an order dated 16.10.2017. The operative portion of the order is as follows:

> "8.1 In the light of the above, the Bench settles the case under Section 127 (C) the Customs Act, 1962 on the following terms and conditions:
>
> i. DUTY: The Additional differential amount of Customs Duty in this case is settled at Rs.2,00,41,149/- (Rupees two crores forty one thousand one hundred and forty nine only). As the applicant has already paid the said amount as confirmed by the Revenue the same is appropriated and adjusted towards the duty liability and no further liability subsists in this regard.
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> ii. INTEREST: The interest amount is settled at Rs.19,29,184/- (Rupees nineteen lakhs twenty nine thousand one hundred and eighty four only). As the applicant has already paid the said

amount as confirmed by the Revenue the same is appropriated and adjusted towards the duty liability and no further liability subsists in this regard.

iii. FINE:

(a) Seized goods imported vide Bill of Entry No. 6560549 dated 31.08.2016 with re-assessed value of Rs.12,90,638/- imported through Air Cargo Complex, Shamshabad, Hyderabad is confiscated under Section 111(m) of the Customs Act, 1962. However, the goods are ordered to be released to the applicant upon payment of fine of Rs.5,000/- (Rupees five thousand only) in lieu of confiscation, in terms of Section 125 of the Customs Act, 1962. This amount is to be paid by the applicant within 30 days from the date of receipt of this Order and compliance reported to the jurisdictional Commissioner.

(b) The seized goods imported vide Bill of Entry No. 6642177 dated 07.09.2016 with re-assessed value of Rs.64,16,550/- through Air Cargo Complex, Shamshabad, Hyderabad is confiscated under Section 111(d) and 111(m) of the Customs Act, 1962. However, the goods are ordered to be released to the applicant subject to the fulfillment of conditions as mandated under the Insecticides Act, 1968 and payment of fine of Rs.1,00,000/- (Rupees One Lakh only) in lieu of confiscation in terms of Section 125 of the Customs Act, 1962. This amount is to be paid by the applicant within 30 days from the date of receipt of this Order and compliance reported to the jurisdictional Commissioner. On payment of fine and penalty, the goods be physically released to the applicant- M/s Osho Organics, Hyderabad- by the jurisdictional Commissioner on production of valid registration as required under Section 9 of the Insecticide Act, 1968.

(c) The Bench holds that the imported goods cleared vide Bills of Entry pertaining to their past imports through Air Cargo Complex, Shamshabad and ICD Sanathnagar with a total differential duty of Rs.1,80,46,535/- are liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962. However, as the goods had not been seized at any point of time in this case, the Bench is of the view that the question of imposition of any fine in lieu of confiscation does not arise.

iv. PENALTY: Taking into account the facts and circumstances of the case, the Bench imposes a penalty of Rs.10,00,000/- (Rupees Ten Lakhs only) on M/s Osho Organics, Hyderabad, the applicant, under the provisions invoked in the Show Cause Notice and grants immunity to the applicant in excess of the above amount. The penalty should be paid within 30 days from the date of receipt of this Order and compliance reported to the jurisdictional Commissioner.

v. The Bench refrains from imposing any penalty on Shri T. Ravi Kumar, Proprietor (co-applicant-I) of M/s. Osho Organics, Hyderabad, in view of the penalty imposed on M/s. Osho Organics, Hyderabad, which is a proprietorship concern.

vi. Taking into account the facts and circumstances of the case, the Bench imposes a penalty of Rs.75,000/- (Rupees Seventy Five Thousand only) on Shri S.P.Rajasekhar, Director, M/s. Prism Corp Science Pvt. Ltd., ('Co-applicant-II" –under the provisions invoked in the Show Cause Notice and grants immunity to the applicant in excess of the above amount. The penalty should be paid within 30 days from the date of receipt of this Order and compliance reported to the jurisdictional Commissioner.

vii. Taking into account the facts and circumstances of the case, the Bench imposes a penalty of Rs.75,000/- (Rupees Seventy Five Thousand only) on Shri G. Yugandhar Rao, Director, M/s. Prism Science Pvt. Ltd., ("co-applicant-III") –under the provisions invoked in the Show Cause Notice and grants immunity to the applicant in excess of the above amount. The penalty should be paid within 30 days from the date of receipt of this Order and compliance reported to the jurisdictional Commissioner.

viii. Taking into account the facts and circumstances of the case, the Bench imposes a penalty of Rs.75,000/- (Rupees Seventy Five Thousand only) on Shri Ch. P.V. Sambasiva Rao, Director, M/s. Prism Crop Science Pvt. Ltd.,("co-applicant-IV") –under the provisions invoked in the Show Cause Notice and grants immunity to the applicant in excess of the above amount. The penalty should be paid within 30 days from the date of receipt of this Order and compliance reported to the jurisdictional Commissioner.

ix. <u>PROSECUTION:</u> Subject to payment of the penalty imposed as above within 30 days from the date of receipt of this Order, the applicant is granted immunity from prosecution under the Customs Act, 1962."

4. The grievance of the petitioner is that though they have complied with all the conditions stipulated in the operative portion of the order dated 16.10.2017, the imported goods are not released in favour of the private limited company, whose Directors were co-applicants. But, the refusal of the respondents to release the goods is on account of the direction contained in para 8.1.iii (b) of the order of

settlement Commission to the effect that upon payment of fine and penalty, the goods shall be physically released to the applicant, namely Osho Organics, Hyderabad.

5. The contention of the learned Standing Counsel for the department is that the Departmental authorities are not entitled to go beyond the directions contained in the operative portion of the order of the Settlement Commission. But, the predicament of the petitioner is that the Settlement Commission, having become *functus officio*, after the disposal of the case, cannot entertain any application for modification. Therefore, the petitioner is before this Court.

6. The fact that apart from the petitioner herein there were three other persons, who were described as Directors of a private limited company were shown as applicants, is borne out by column No.2 of the impugned proceedings. There is no special reason assigned in the entire order of the settlement commission as to whether and how only one of the four applicants is entitled to the release of the goods. As a matter of fact, individual penalties have been imposed upon the co-applicants. In such circumstances, we do not think that the direction contained in para-8.1.iii (b) to release the goods in favour of the petitioner is so inelastic as to deprive the other co-applicants from getting the goods released. So long as there is no dispute among the co-applicants and so long as no special reasons are assigned as to why only one of the co-applicants is entitled to the release of the goods, there should be no difficulty in releasing the goods to the company. This is, however, subject to verification of compliance with the directions contained in the order of the settlement commission.

7. Therefore, the writ petition is disposed of directing the respondents 3 and 4, to release the goods covered by bill of entry

No.6642177 to the company M/s.Prism Crop Science Private Limited, subject to the verification that the petitioner has complied with the operative portion of the order of the Settlement Commission and subject to the petitioner producing the necessary certificate under the Insecticides Act in favour of M/s.Prism Crop Science Private Limited.

8. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

May 01, 2018
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